

Title Policy Issues: Capital Advances and Insured Advances (1/1/2007)(dcm)

Information for SPONSORS AND DEVELOPERS of HUD Multifamily Projects:

Project sponsors and developers should ADVISE THEIR TITLE COMPANY REPRESENTATIVE FROM THE START THAT THEIR PROJECT IS A HUD PROJECT. This will signal the title company that special requirements and procedures will be involved. Many title companies have senior title and escrow officers who have experience in working with HUD. The loan closing process will go much more smoothly if you find this person and follow the requirements of this guideline.

Sponsors and developers get no benefits from the title policy described herein. You should discuss an owner's title policy with your attorney, consultant or other financial advisor, or with the title company.

1. PRELIMINARY TO INITIAL CLOSING:

We require a pro forma lender's extended policy on ALTA Form 2006 with the following features:

A. Amount of Insurance: Equal to Mortgage

B. Date: Initial Closing Day

C. Name of Insured: Secretary of Housing and Urban Development AND the Mortgagee, their successors and assigns, as their interests may appear.

D. Vested in: Prospective owner at end of initial closing.

For the purposes of initial closing, we are not interested in how the owner comes into title. It is up to the owner, title company, and their respective attorneys to work out the details of options, bankruptcy release, grantor authority, payoff of liens and encumbrances, etc.

E. Estate or interest: Fee Simple Absolute (If a leasehold is contemplated, obtain a leasehold policy.

F. Insured Mortgage: Describe recorded

Mortgage and Future Advances

Regulatory Agreement

Use Agreement (Capital Advances only)

G. Land Description: Exactly as specified in Survey and Mortgage

H. Substantial permanent beneficial rights for such purposes as access must be shown in the

documented by a permit which includes a hold harmless agreement and disavows any claim of right by adverse possession or prescription.

Encroachments onto adjacent property must be documented by an easement which allows the encroachment to remain for its useful lifetime.

In some cases, encroachments may be resolved with an endorsement to the title policy, in which case it is expected that the encroachments will not appear in Schedule B, and the Encroachment Endorsement will describe the encroachments specifically.

J. Endorsements required: Subject to state and local practice requiring or prohibiting certain endorsements, or making certain endorsements prohibitively expensive, the policy must include the following endorsements:

1. Comprehensive, ALTA Endorsement Form 9-06 (or 9.3-06) – Restrictions, Encroachments, Minerals;
2. Access, ALTA Endorsement Form 17-06;
3. Zoning, ALTA Endorsement Form 3.1-06 based on plans and specifications (for unimproved land) or Form 3.1-06 (for improved land and upon final closing), each with parking, provided, however, that a zoning letter may be accepted by the HUD Closing Attorney instead of a zoning endorsement, if zoning endorsements are not permitted in the project jurisdiction;
4. Environmental Protection Lien, ALTA Endorsement Form 8.1-06;
5. Same as Survey, ALTA Endorsement Form 25-06; 53 Part 3: Diligence and Other Closing Requirements September 1, 2011
6. Easement endorsements, including insurance over blanket easements or other easements that cannot be plotted;
7. Deletion of arbitration provisions;
8. Construction Loan Pending Disbursement, ALTA Endorsement Form 32-06, if applicable (provided that, at each draw, an ALTA Endorsement Form 33-06 date down must extend the date of coverage to the draw date);
9. Future Advances, ALTA Endorsement Form 14-06, if applicable;
10. Leasehold, ALTA Endorsement Form 13.1-06, if a leasehold estate;
11. Air rights, if applicable; and
12. Any others determined necessary and appropriate by the HUD Closing Attorney.

2. INITIAL CLOSING DAY

The title company is expected to collect all documents and record them on closing day (or before or after, depending upon the location). Title companies must then provide a

legal description in Schedule A.

I. Schedule B exceptions:

1. ALTA extended coverage is free from exceptions such as mining claims, claims to water, patent reservations, etc.

2. Any reference to taxes shall specify that the taxes are not due and payable. All due and payable taxes shall be paid prior to or at closing.

3. It is required that the title company will be provided with a survey and that there will be no exception for encroachments and other matters that a valid survey would disclose.

4. It is expected that (in Oregon) the title company will insert an exception for statutory mechanics liens. It is required that this exception will be deleted at final closing. Some mortgagees will not accept this exception at initial closing. If this is the case, an agreement on substitute wording should be made a condition of the agreement with the title company. This often requires extensive negotiation with the title company, so this process should be given substantial time and serious consideration. This agreement should be concluded early in the process, with the concurrence of HUD.

The Portland Office accepts the exception if the mortgagee and mortgagor (sponsor and owner in the case of Capital Advances) sign a letter (which HUD provides) holding HUD harmless for mechanics liens that may be filed.

5. No monetary encumbrances are allowed in Schedule B. Secondary liens are allowed only with special permission of HUD. Permission is granted in very limited circumstances.

6. All documents listed in Schedule B must be provided to HUD. All prior covenants limiting use of the land will be reviewed to ensure that the proposed use is acceptable to HUD. If prior limitations exist which restrict use in a manner unacceptable to HUD, it will be the responsibility of the owner and the title company and their respective attorneys to find a way to delete these exceptions.

7. Restrictions with a reversionary clause or right of reentry or similar provision are not acceptable.

8. A UCC fixture filing will be required in the county, and must be listed in Schedule B-2.

9. Free-floating easements will not be permitted: they must be reduced to a defined location. A defined location that interferes with property development is not acceptable.

10. Encroachments either way across the property lines will not be permitted. They must be reduced to writing and recorded as easements or permits.

Encroachments onto the insured property which are allowed to remain must be

complete signed original policy at the HUD office on closing day. It is expected that an authorized representative of the title company will attend the closing to sign the policy and make any corrections or modifications that may be necessary.

Out of town title companies should make arrangements with a local title company to represent them at the closing.

Title transfers, mortgage releases, and disbursements required to obtain the required title policy should be arranged by the sponsor with the title company in advance of the closing.

3. CONSTRUCTION PERIOD

Periodic updates to the title policy will be required to be issued in conjunction with the periodic advances that are made as the project progresses.

The endorsements should specify the calendar date of the disbursement, rather than the plant date.

4. PRELIMINARY TO FINAL ENDORSEMENT

A. The title company must make a commitment from the start that at Final Endorsement it will provide:

1. A modification endorsement, if the Mortgage amount changes.

OR

2. A date-down policy or permanent loan policy if there has been no modification, or in addition to the modification endorsement if required by the mortgagee. The price of the date-down policy should be no more than 25% of the basic fee, with no additional charge for the ALTA endorsement.

The price of the date-down should be established early so that it can be considered for inclusion in the mortgage.

B. The title company should provide a pro forma policy/endorsement in the above (4.A.) format prior to final closing, which is accompanied by an Elimination of Exceptions Endorsement which eliminates the statutory mechanics lien exception referred to above (1.1.4.).

5. FINAL ENDORSEMENT DAY

The title company will be expected to file any documents required for final closing, on closing day, and present original signed policies or endorsements at the HUD office on closing day. The title company is often the escrow agent for expenses to be paid out of the final draw. If this is the case, the title company must attend the closing or arrange for an authorized agent to accept the funds.